

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

HARLEM MARKET, INC.

Debtor.
-----X

Case No. 18-10754-MEW
Chapter 11

**OBJECTION BY AK
PROPERTIES GROUP LLC TO
DEBTOR'S MOTION TO EXTEND TIME**

AK PROPERTIES GROUP LLC ("AK" or "Landlord"), Landlord of the Debtor, objects to the motion for an extension of time to elect to assume or reject its unexpired non-residential lease for the premises at 2005 Third Avenue, New York, New York and shows as follows:

1) That on or about March 19, 2018, the Debtor, HARLEM MARKET, INC., filed a Chapter 11 petition with this Court.

2) The Debtor is a tenant at non-residential real property located at 2005 Third Avenue, New York, New York from which it operates a retail grocery store.

3) The Debtor occupies the premises pursuant to a written lease dated April 2015 by and between the Debtor, as Tenant, and AK PROPERTIES GROUP LLC, as Landlord.

4) As of the filing date, the Debtor had lease arrears totaling \$214,912.85, excluding counsel fees.

5) The lease provides, among other things, that the monthly rent of \$17,500.00 be paid in advance on the first day of every month.

6) Since filing its Chapter 11 petition, the Debtor has never timely complied with its rent obligations. Annexed hereto, as Exhibit "A", is a schedule of all payments made through June 13, 2018 which represented the April 2018, May 2018 and June 2018 rent.

7) No “stub” rent was ever paid for the period from March 19, 2018 through March 31, 2018. No late fees were ever paid despite the fact that each and every month was late.

8) Annexed hereto, as Exhibit “B”, is a copy of the recent demand for timely payment of the post-petition real property tax bill of \$37,453.00 which is due under the lease within 10 days of demand.

9) Landlord objects to any request for an extension of time to assume or reject this lease. The Debtor has had statutory protection from the automatic stay against all creditors for nearly four months but has never timely paid its rent during that time.

10) The Debtor has demonstrated its inability to timely perform even the most basic lease obligation.

11) The Debtor can assume the lease, it can reject the lease, or it can assume and assign the lease. The only thing the Debtor cannot do is unilaterally change the lease to make it more attractive to prospective assignees.

12) The lease terms, which gives the Landlord the right to terminate the lease upon certain conditions, is clear and unambiguous. It was negotiated at arms length by both parties who were represented by counsel.

13) The Debtor herein acquired the business from the prior operator of the grocery store. The Debtor insisted on a new lease, which was entered into. The prior lease with the prior operator contained identical language granting the Landlord permission to terminate the lease. Clearly, this was not an impediment to the Debtor or its principal who guaranteed the lease.

14) The Landlord provided pre-petition funding to the Debtor of more than \$200,000.00 consisting of rent arrears.

15) The Debtor has had ample opportunity to make a business judgment as to whether

or not to assume this lease.

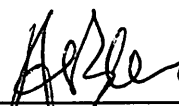
16) In the event this Court gives any consideration to the Debtor's motion, any extension should be expressly conditioned upon the Debtor timely complying with all of its obligations under the lease, as is required by Section 365(d)(3). The Debtor never sought or obtained relief from those obligations.

17) Significant by its absence is any sworn affidavit from the principal of the Debtor that, as of July 17, 2018, it was "current" on its' post-petition rent. Clearly, counsel for the Debtor is relying upon a misrepresentation by the Debtor.

18) Given the Debtor's failure to timely comply with any of its post-petition obligations, as well as the substantial pre-petition default, Landlord submits there is no cause to grant this Debtor any extension.

WHEREFORE, Landlord requests that Debtor's motion be, in all respects, denied; that the lease be deemed rejected; and for such other relief as is just and proper.

Dated: July 16, 2018
Huntington, New York



ALLAN B. MENDELSON
ALLAN B. MENDELSON, LLP
38 New Street
Huntington, New York 11743
(631) 923-1625

2018	TOTAL NO FEE BALANCE	TOTAL BALANCE	RENT	RENT PAID			RENT OWED	RENT LATE FEES		
AK Properties Group LLC 2005 Third Ave		Rent		Payment	#	Date	Owed \$0.00	Late Fee	X	Late Default
Debtor in Possession		Rent		N/A						
Due Date:	1	January	\$6,774.12	N/A			\$6,774.12			31
Late - Rent:	7	February	\$17,500.00	N/A			\$4,375.00			25
Late - Additional:	10	March	\$17,500.00	N/A			\$875.00			28
Late - Fee:	0.05	April	\$17,500.00	N/A			\$875.00			12
Owed - Rent:	\$6,774.12	May	\$17,500.00	N/A			\$875.00			
Owed - Additional:	\$19,243.79	June	\$17,500.00	N/A			\$875.00			
Owed - Taxes:	\$26,017.91	July	\$17,500.00	N/A			\$875.00			
Subtotal:	\$2,318.15	August		N/A						
Owed - Late Fees:	\$28,336.06	September		N/A						
Total - Balance:		October		N/A						
		November		N/A						
		December		N/A						
		TOTALS:	\$59,274.12	\$52,500.00			\$6,774.12	\$1,750.00	2	31

04/26/2018	HARLEM MKT INCA K PR		ACH DEPOSIT HARLEM MKT INC A K PROP RENT A ND TAXES 002 0000000000043750014 73660304		\$4,375.00	Not available for this date
04/26/2018	Total Calculated Credits (1 Item)				\$4,375.00	
04/23/2018	EM MARKET INC	1	INCOMING WIRE REF# 20180423B6B7261F0014640423 1741FT03 0000008333 FROM: HARLE M MARKET INC ABA: 011103093 BAN K:		\$8,750.00	Not available for this date
04/23/2018	Total Calculated Credits (1 Item)				\$8,750.00	
06/20/2018	Totals			\$0.00	\$52,500.00	

AK Properties Group LLC

309 E 94th St
Ground Floor West
New York, NY 10128
121.423.9300

INVOICE

DATE:

6/12/2018

BILL TO:

Harlem Market, Debtor in Possession
2005 Third Ave
New York, NY 10029

DESCRIPTION	AMOUNT
<u>Real Estate Tax</u>	
Current Year – 2018/2019	\$74,906.00
First Half	\$37,453.00

SUBTOTAL \$37,453.00

OTHER COMMENTS

Total Payment Due within 10 days of invoice

TOTAL \$37,453.00

Make all checks payable to
AK Properties Group LLC

If you have any questions about this invoice, please contact us:
tenant@kartenrealty.com



**Department of
Finance**

Statement Details

June 1, 2018
Ak Properties Group
2005 3rd Ave.
1-01660-0001
Page 2

Billing Summary	Activity Date	Due Date	Amount
Outstanding charges including interest and payments			\$0.00
Finance-Property Tax	07/01/2018		\$37,452.96
Total amount due			\$37,452.96

Tax Year Charges Remaining	Activity Date	Due Date	Amount
Finance-Property Tax	01/01/2019		\$37,452.96
Total tax year charges remaining			\$37,452.96
If you want to pay everything you owe by July 2, 2018 please pay			\$74,531.39
If you pay everything you owe by July 2, 2018, you would save:			\$374.53

Annual Property Tax Detail			
Tax class 4 - Commercial Property	Tax rate		
Current tax rate	10.5140%		
Estimated market value \$1,969,000	Billable assessed value		
	\$712,440	Tax rate	
Tax before exemptions and abatements	X	10.5140%	= Taxes
			\$74,906
Tax before abatements			\$74,906
Annual property tax			\$74,906

The NYC Health Department would like to remind property owners that they must remove standing water, where mosquitos can breed in warm weather. For more information, please visit nyc.gov/health or call 311.

Home banking payment instructions:

1. Log into your bank or online bill pay website.
2. Add the new payee: NYC DOF Property Tax. Enter your account number, which is your boro, block and lot, as it appears here: 1-01660-0001. You may also need to enter the address for the Department of Finance. The address is P.O. Box 680, Newark NJ 07101-0680.
3. Schedule your online payment using your checking or savings account.

Did your mailing address change?

If so, please visit us at nyc.gov/changemailingaddress or call 311.

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.



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Debtor.

AFFIDAVIT OF SERVICE
-----X

STATE OF NEW YORK, COUNTY OF SUFFOLK

ss.:

The undersigned, residing at the address set forth below, being duly sworn, deposes and says: that deponent is not a party to this action, and is over the age of eighteen (18) years.

That on the date this affidavit was sworn to, deponent served a copy of the within Objection by AK Properties Group LLC to Debtor's Motion to Extend Time upon:

Harlem Market Inc., 2005 Third Avenue, New York, New York 10001

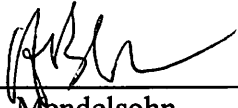
J. Ted Donovan, Esq., Goldberg, Weprin Finkel Goldstein, LLP,
1501 Broadway, 22nd Floor, New York, New York 10036

Kevin J. Nash, Esq., Goldberg, Weprin Finkel Goldstein, LLP,
1501 Broadway, 22nd Floor, New York, New York 10036

United States Trustee, Office of the United States Trustee, U.S. Federal
Building, 201 Varick Street, Room 1006, New York, New York 10014

the address(es) designated for that purpose, by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, first class mail, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this
16th day of July 2018



Allan B. Mendelsohn
Kings Park, New York



Notary Public

MICHAEL J. O'SULLIVAN
Notary Public, State of New York
No. 020S4985526
Qualified in Nassau County
Commission Expires August 19, 20 21

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